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April 12, 2004

**RECEIVED**

**APR 12 2004**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

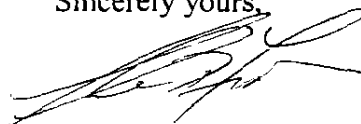
Re: CC Docket No. 97-80 & PP Docket No. 00-67, Implementation of  
Section 304 of the Telecommunications Act of 1996, et al.

Dear Ms. Dortch:

On behalf of the Recording Industry Association of America, I am submitted an original and five copies of an Ex Parte filing in connection with the above-referenced rule making proceeding. I am also filing simultaneous under separate cover, the same Ex Parte submission in MM Docket No. 02-320, Digital Broadcast Copy Protection.

If there are any questions concerning this matter, please let me know.

Sincerely yours,



Theodore D. Frank  
Counsel for the Recording Industry  
Association of America

cc: Kenneth Ferree, Esq.  
Rick Chessen, Esq. (by e-mail)  
Mary Beth Murphy, Esq. (by e-mail)  
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Re: CC Docket No. 97-80 & PP Docket No. 00-67, Implementation of  
Section 304 of the Telecommunications Act of 1996, et al.  
MM Docket No. 02-320, Digital Broadcast Copy Protection

Dear Ms. Dortch:

The letter is submitted on behalf of the Recording Industry Association of America ("RIAA") in support of the Joint Reply of The National Music Publishers' Association, The American Society of Composer, Authors and Publishers, The Songwriters Guild of America, and Broadcast Music, Inc. ("Petitioners") to Oppositions to their Petitions for Reconsideration of the Commission's Reports and Orders in the above-referenced rulemaking proceedings. In those Petitions for Reconsideration, the Petitioners had urged the Commission to amend its "Plug & Play" and "Broadcast Flag" rules to afford greater protection for the audio portion of television programming, principally by requiring that any audio material associated with a television program be displayed only when and at the same speed as the visual portion of the work is displayed.

RIAA filed Comments in those proceedings that generally supported Petitioners' position. RIAA also supports the Petitioners' Joint Reply filing. As they noted:

1. There can be no serious question but that there has been widespread pirating of musical works through electronic file sharing and that, notwithstanding RIAA's diligent efforts to halt the practice, piracy is continuing. The broadcast of CD-quality digital music in the clear will unquestionably aggravate this situation. Indeed, contrary to the assertions of some of the Petitioner's opponents, there is no reason to believe that music does not need the same protection against piracy as the Plug & Play and Broadcast Flag requirements grant the video portions of television programs. As

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RIAA argued in its Comments in these proceedings, there is no rational basis for treating audio material in an audiovisual work any less favorably than the video portion; the audio material constitutes an integral part of the audiovisual work. Those opposing the adoption of rules urged by the Petitioners and RIAA are simply seeking Commission approval of devices that undermine the copyright laws and facilitate the expropriation of the intellectual property of musicians, composers, artists, recording companies, and others.

2. The proposal advanced by the Petitioners does not require the development of a new encryption system. As the Petitioners note, the requirement that the audio and video portions be displayed as a unified work is solely a limitation on the functionality of the device. Moreover, even if some modifications are required in some devices, RIAA's proposal to apply any new requirements only to devices manufactured 18 months after the new rules are adopted gives equipment manufacturers time to develop and deploy the new technology.

3. Similarly, a requirement that the audio and visual portions of an audiovisual work be "tethered" will not render existing home theaters and "surround-sound" systems obsolete. Owners of those systems will be able to continue to use them to view television programming as broadcast or as recorded; the owners would simply be precluded from copying or redistributing the audio portion in circumstances where they are not permitted to copy or redistribute the video portion. Thus, the concerns about "legacy" devices are unfounded.

4. Lastly, the assertion that the Petitioners' proposals might restrict future business models constitutes nothing more than a plea that the Commission facilitate business models that ignore the nation's copyright laws. As RIAA noted in its Comments, the Commission cannot ignore the principles underlying federal copyright law, and, where, as here, communications policy objectives can be achieved without encroaching on the policies of the Copyright Act, the Commission should adopt rules that respect those policies.

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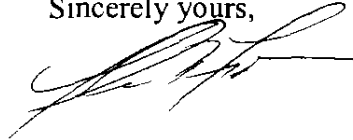
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Accordingly, RIAA urges the Commission to adopt the proposals advanced by the Petitioners in their Petitions for Reconsideration as supported by RIAA in its Comments in these proceedings.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Theodore D. Frank', with a stylized flourish at the end.

Theodore D. Frank

cc: Kenneth Ferree, Esq.  
Rick Chesson, Esq. (by e-mail)  
Mary Beth Murphy, Esq. (by e-mail)  
Steve Marks, Esq.